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G.F. (A)

Department of

OFFICE

STATION

M No. 653

Dated

To whom sent	Date	Initial.
	Given for copying	
	Copied	
	Examined	
	Signed	
	Given for despatch	
	Despatched SW	15/6/21
	Indexed	
Pages in the file	To be destroyed on	

SUBJECT

* Not to be filled in the case of permanent records.

A2209

Ref. on No. 1943-21-V. 3. South Kanara Collector's Office,
Mangalore, 1st June 1921.

From

R. H. Ellis, Esquire, I.C.S.,
Collector of South Kanara.

To,

The Secretary to the Board,
Land Revenue. Madras.

Suit - 36/21 - Coondapoor District Munsif's Court - filed by one Panduranga Kini against Government.

The suit is for a declaration that the Plaintiff is the owner of the plaint land, S.F.No. 72/21A of Balakudru village, Udini Taluk. and for other consequential reliefs - vide copy of plaint enclosed.

plaint Lhaa
5 p 4 c

2. The plaint plot is a portion of the poramboke dock-yard within the port limits of Hangarkatta. In 1916 it was - applied for by the Plaintiff's brother Nagappa Kini on lease, but the application was rejected by the Port Officer, Mangalore, who on local inspection found that the plot applied for was -- required for marine purposes and that there was plenty of land available to the Plaintiff behind his godown. Nevertheless, in December 1917 both the Plaintiff and his younger brother ----- Naganna Kini encroached upon the plaint plot by erecting a --- building thereon in continuation of their existing warehouse. Thereupon an enquiry was held during which Nagappa Kini admitted the encroachment, and prayed that further action might be ---- stayed pending orders on his petition which he was going to -- submit to the Customs Collector asking for a lease of the plot. As the Port Officer had however already inspected the ------ encroachment, a notice under section 7 of the Land Encroachment

Act was at once served upon the Plaintiff. He then set up a warg claim, claiming the plaint plot as part of his adjoining land which, he said, belonged to gharterige warg and produced some private documents. But he never made any attempt to substantiate his claim by the production of revenue documents, though he was given ample time to do so. An order under section 6 of the Land Encroachment Act was at last issued to him on 25th April 1920. Against this order he appealed to me. I found his claim to be false for the reason that he had, for a very long time prior to this, been paying rent for the coccanut trees standing on the plaint plot. I accordingly rejected the appeal. He then sent a suit notice which was recorded.

3. The Government Pleader, Mangalore who was consulted in the matter states that the Plaintiff's claim is untenable and that the suit must fail - vide copy of his letter No. 102 dated 28th May 1921 enclosed. I agree with him and request that the enclosed draft written statement prepared by him may be approved.

4. I propose to file an extract from the Settlement register relating to the plaint plot, the statement of Plaintiff's brother wherein he stated that he would apply to the Customs Collector for the grant of the land on lease, the records showing the collection of the tree tax in respect of the coccanut trees on it and the Port Officer's order dated 18.4.1916 which shows that the Plaintiff's brother had even then applied for the grant of the land on lease.

5. I enclose the statement prescribed in B.S.O. No. 93.

For Collector.

M.S.R./1-6.

In the Court of the District Munsiff of Coondapoor.

Original Suit No.136/1920.

Between.-

Plaintiff ... Tonse Panduranga Kini.

And

Defendant ... The Secretary of State for India in Council.

Plaint under Order 7 R. 1 and 2 C.P.Code.

1. Plaintiff is the son of Rangappa Kini and a merchant and land-holder, residing in Tonse Kasba village.

2. The process of the defendant may be served on the Collector of South Canara.

3(a). Plaintiff is the owner of the plaint plot fully described herein below; the said plot having been in the possession of plaintiff and his predecessors-in-title for over the last 60 years on warg right and in open assertion of the said warg right.

(b). The Revenue Authorities have wrongly regarded plaintiff's possession of the said land as an encroachment and ordered the plaintiff to remove a structure constructed by plaintiff on the said plot. It is only then that the plaintiff came to know that the plot had been wrongly omitted from the patta at the recent Settlement.

(c). Plaintiff appealed against the said order to the Collector of South Kanara who dismissed plaintiff's appeal on 8th September 20.

(d). The Revenue Authorities have not yet taken action on the said order and the plot remains in the possession of plaintiff.

(e) Plaintiff is therefore constrained to sue for declaration that he is the owner of the plaint plot and entitled to the patta thereof and for permanent injunction restraining the defendant from entering on the said plot. The notice required by law has

been served on the Collector of South Kanara on 30th September 20.

(f). The cause of action for the suit arose on 8th September 1920 when the defendant finally refused to include plaint plot in defendant's patta at Balakudru village within the jurisdiction of this -- Court.

4. Plaintiff values the relief claimed at Rs.25/- for the ------ purposes of jurisdiction of Court Fees.

5. Therefore the plaintiff prays for a decree and judgment

(a)1. For declaration that plaintiff is the owner of the plaint land and entitled to the patta thereof. This relief is valued ---- at Rs. 30-0-0.

2. For a permanent injunction restraining defendant or his men from entering on the plaint land. This relief is valued at Rs.5-0-0.

Total Rs.35-0-0.

(b). Such other reliefs as the Court thinks competent in the --- circumstances of this case.

Schedule of description of the plaint property.

S.F.No.72/2-A of Balakudru village, Udipi Taluk.

(Signed) **********

Vakil for K.L.Bhandary.

(True Copy)

P K Mambran 2-6

For Collector.

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Copy of letter No.102, dated 28th May 1921 from ..J.Lobo, Esquire, B.A., B.L., Government Pleader, Mangalore to the ----- Collector of South Kanara.

I have the honour to return the records sent to me with -- your letter Ref.No.1943-21-V3, dated 20-5-1921. I have recast the statement and have rewritten the same.

On the merits, I am of opinion that plaintiff's claim is quite untenable. I find in the records sent, a statement made by Nagappa Kini who I think is the brother or the claimant ---- Panduranga Kini, and whose name is shown in the sketch dated --- 23-12-1917 as the owner of the adjoining land (No. 11 in the --- sketch) in which he has clearly admitted the encroachment and -- has prayed that the land may be leased to him on rent. This -- admission is clearly binding on the plaintiff. The documents - produced by the claimant during the Revenue enquiry being between private parties cannot bind Government. The plaintiff has ---- practically no evidence in proof of his title to the ~~said~~ suit plot. Even if he had any such right it is now clearly barred he having failed to bring the suit within six months from the date of the cause of action viz., the Settlement order demarcating the same as Government land and excluding it from plaintiff's patta.

I have little doubt that plaintiff's suit must fail.

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2-6

For Collector.

1884/1/6.V

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In the Court of the District Munsiff of

C o o n d a p o o r.

Original Suit No. 136/1921.

Between.-

Tonse Panduranga Kini ... Plaintiff.

and

The Secretary of State for India in Council ... Defendant.

Written statement of the defendant under Order VIII Rule 1 of C.P.C. V of 1908.

The defendant begs to state as follows:-

1. The plaintiff's suit is frivolous and his claim to the --- plaint plot is unsustainable.

2. The defendant denies that the plaint plot belongs in warg right to plaintiff or that it has ever been in his possession as such.

3. The suit plot S.No.72/21-A is poramboke land and forms --- portion of the dock-yard 72/21 and is included within the Hangar-Katta port limits.

4. The plaintiff having encroached upon the suit land by --- erecting a thatched structure thereon, he was ordered to have the encroachment removed as it was found highly objectionable. He having refused to remove the encroachment, proceedings were ----- rightly taken against him under the Land Encroachment Act. The plaintiff is not entitled to question the propriety or legality of the said proceedings.

5. The plaint plot being portion of Government dock-yard was registered as such at the Survey and Settlement. The plaintiff having failed all this time to question the said classification and the exclusion of the same from his patta, his right, if any, to the said plot is now barred under the Law of Limitation.

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6. The date of the cause of action mentioned in the plaint is wrong and incorrectly stated.

7. The allegations made by plaintiff in para 3 of the plaint are denied and defendant puts plaintiff to strict proof of the - same.

8. The plaintiff's suit for a declaration is both unsustainable in law and (is) clearly barred.

9. The plaintiff is not entitled to any relief.

It is therefore prayed that the plaintiff's suit may be dismissed with costs.

South Kanara Collector's Office,
Mangalore, June 1921.

D/Members 2/6
For Collector.

20-6-2

12209/21

Suit (S. Kanara) Coondapur 1/plaintiff. O.S. No 36/21.
Balakudaru - Land within port limits Encroachment -
Defence sanctioned.
Rs. Rs 653/63.6
The Board sanction the defence of the suit and Issue
Approve the draft W/S subject to the following
Modification
Add the following as para 10
The defendant denies the allegations made by the
Pff except those which are herein expressly admitted
& puts the Pff to strict proof of the same.

Issue
Rec
136

W/S

Pff
7/21
Rec
26/21

To The Collector of Kanara
Bm.
15.6.21

Wb 11 6 21
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